



# BUILDING RELATIONSHIPS with FIRST NATIONS

Respecting Rights and Doing Good Business





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## **Principles for Building Relationships**

*Be Respectful*

*Engage Early*

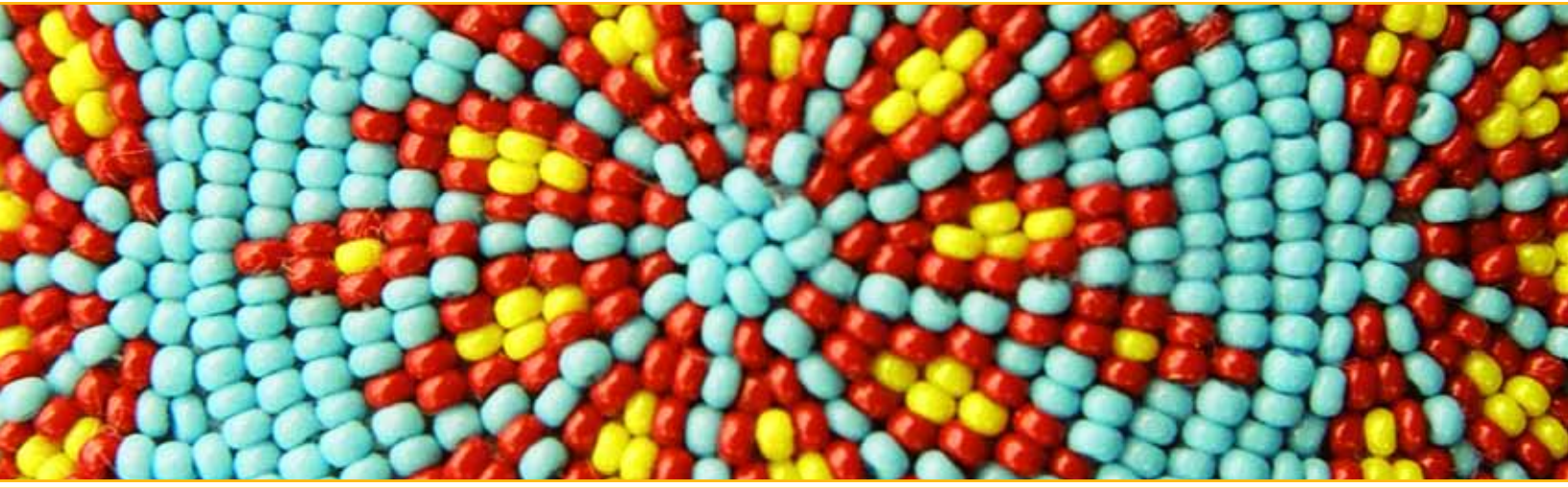
*Be Open and Transparent*

*Act with Honour*

*Listen*

*Be Willing to Adapt if You Can*

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## Introduction

British Columbia is one of North America's most competitive and dynamic places to do business. The province offers many economic opportunities thanks to a wealth of natural resources and a growing, skilled workforce.

The province is also home to a diversity of indigenous peoples (also known as First Nations or Aboriginal peoples) who have inhabited this land for many generations. As indigenous people were the original occupants of the land, they have certain legal rights (Aboriginal or treaty) that other British Columbians do not have. This shapes the provincial government's relationship with indigenous people – it is a government-to-government relationship where First Nations are rights-holders not stakeholders.

The relationship between the Province and First Nations has evolved to include meaningful consultation with First Nations on Crown actions that impact land and resources and greater opportunities for First Nation participation in social and economic development. The B.C. Government takes an inclusive approach to land and resource management and increasingly seeks First Nations' input into decision making processes. Also, government shares revenues from resource development with First Nations in an effort to stimulate local economies and improve social conditions.

The motivation for a more inclusive approach is, in part, based on government's desire to ensure a stable investment environment that allows business to tap B.C.'s full potential. As the Province develops its relationships with First Nations, companies looking for investment and growth opportunities in British Columbia have important relationships to consider building as well. These relationships include engaging First Nations as part of the Crown's consultation process and perhaps creating

business partnerships or opportunities with First Nations that are mutually beneficial.

Relationships between many companies and First Nations are evolving – many businesses understand an important component to succeeding in British Columbia is involving First Nations from initial stages of development. The business community is increasingly aware of the role responsible business practices can play in fostering stability for communities and business alike.

These efforts are not limited to B.C. but are happening around the globe as companies realize the benefits of working with indigenous peoples. In recent years, businesses world-wide have engaged with indigenous peoples in a way that builds and supports strong communities and fosters opportunities for people to pursue a living. Corporate engagement with First Nations in British Columbia is no different.

The purposes of this document are to: help companies understand the unique circumstances that frame the legal and business environment in British Columbia; and provide practical assistance and observations for building lasting relationships with First Nations. Relationship between proponents, as well as existing industries, and First Nations can provide solid foundations for effective consultation processes and business partnerships.

This document is divided into two broad sections. The first section provides an overview of the circumstances in the province and the role of proponents and/or existing industries in government's consultation processes. The second section describes how some companies are building effective relationships with First Nations.

# The Unique Circumstances In British Columbia

## About First Nations in British Columbia

British Columbia is home to more than 200 bands (of the 600 in Canada) and 34 distinct First Nation languages and associated cultural identities. There are nearly 200,000 people in the province who identify themselves as First Nation. As a result, First Nations peoples in B.C. are the most culturally and linguistically diverse in the country. Each First Nation has a unique history and experience.

The differences in ways of life, social organization, governance systems, approaches to business, relationships to resources, and social priorities must be considered when engaging First Nations. And although each community is unique, many First Nations share an interest in participating in the decision making processes over lands that they claim and, benefiting from the results of development.

### *The significance of land to First Nations*

Like other indigenous peoples around the world, First Nations in B.C. had thriving social structures and economic interests before contact with foreign settlers and colonists. These interests were based on a relationship with the land – including occupying lands and using products from the land. These interests, along with other elements such as spirituality, formed the basis of First Nations societies. The relationship to land and resources underpins the spiritual, social, cultural, economic and political nature of First Nation societies.

Since the arrival of European laws and practices, the significance of land to First Nations in B.C. has not diminished. Land management and resource use issues are key areas of concern for many First Nations because their cultural practices, traditions, spirituality and well-being have always been intricately linked to the land. Access to land and participating in land use decision making processes is sought by First Nations for purposes of nourishing their cultures, helping to build sustainable local economies and deriving economic benefits from lands and resources.

### **Treaty Types**

*Historic treaties generally refer to land surrendered by First Nations in exchange for benefits that may include hunting, fishing and trapping. These include Treaty No. 8 in north eastern B.C. and the 14 Douglas Treaties on Vancouver Island. They all occurred prior to 1925.*

*Modern treaties are agreements that set out rights and obligations for all parties, including land ownership and any consultation obligations. The first modern treaty in B.C. with the Nisga'a Nation, came into effect in 2000. Since then, treaties with Tsawwassen and Maa-nulth First Nations have concluded. Several other negotiations are currently in the final stages of completion.*

## The Legal Framework — the Aboriginal Rights Question

Long before Europeans settled in North America, indigenous peoples occupied these lands and, as such, have a unique legal status. This is recognized in the Canadian legal system through the inclusion of Section 35 of the Constitution Act, 1982 which states: "...the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed." Since this inclusion, a substantial body of common law has developed that identifies and defines Aboriginal and treaty rights and governs how they are to be reconciled with the rest of Canadian society.

### **Treaty Rights**

Treaty rights are set out in solemn and binding agreements between the Crown and First Nations and those rights enjoy constitutional protection. Only 1/3 of the province's land base is covered by either historic or modern-day treaties - that is, where rights, obligations and in some cases engagement processes are set out by way of solemn treaty agreements (also called land claims agreements or Final Agreements).



## Aboriginal Rights

With few treaties in place in B.C., court rulings continue to shape the relationship between non-treaty First Nations and the Crown in very substantial ways. While Section 35 gives recognition and affirmation to existing Aboriginal rights, including Aboriginal title, it does not address their proof, their nature or their location. Starting in the 1970s, the courts have been attempting to clarify the general nature of Aboriginal rights by defining legal tests by which they can be identified, legally proved and, where necessary, infringed by the Crown. While the courts have made some specific findings, they have been generally reluctant to make specific declarations of the existence of particular Aboriginal rights or title, favouring instead an approach of urging the Crown and First Nations to negotiate reconciliation.

The courts have told governments that Aboriginal rights are practices, customs or traditions integral to a distinctive culture of a First Nation and they may be historically connected to a particular area of land. Examples may include hunting, fishing, plant gathering and use of wood for domestic purposes. More than one First Nation may have rights in the same area and the types of rights may vary across communities.

An important sub category of Aboriginal rights is Aboriginal title. Aboriginal title is a unique interest in the land that encompasses a right to exclusive use and occupation of the land.

Successive court rulings have resulted in adjustments to the province's approaches and policies to addressing the Aboriginal rights question. Most notably, the Supreme Court of Canada in *Haida*, expanded the Province's duties to consult First Nations, not only about proven rights, but also in respect of asserted rights when contemplating conduct that might impact them and, then accommodate those asserted rights, where required. These obligations apply to federal, provincial and territorial governments for land and resource decisions within their jurisdiction.

### *The duty to consult*

The Crown's duty to consult is readily triggered – it is triggered where claimed or proven rights, or treaty rights, may be impacted by a potential Crown action or authorization. The extent of consultation will vary with the circumstances and will be determined by the nature of the Aboriginal interest impacted, and the degree of that impact.

The duty to consult is not only a substantive duty but also a procedural duty. This means that responses must be reasonable and supported by facts, and processes must be fair and allow First Nations to be informed and respond in reasonable timeframes.

### *The duty to accommodate*

Consultation may reveal a duty to accommodate in certain circumstances. Where there is strong evidence supporting a claim of an Aboriginal right that may be impacted by a proposed action or authorization, government may be required to take steps to avoid irreparable harm or to minimize the impacts. Accommodation primarily means addressing concerns and adapting to or reconciling interests.

*"...the fact is that when the settlers came, the Indians were there, organized into societies, and occupying the land as their forefathers had done for centuries. This is what Indian title means..."*

*Judson, J. in Calder et al. v. Attorney-General of British Columbia, [1973] S.C.R. 313 at 328*

# British Columbia's Approach to the Aboriginal Rights Question

The Province takes four complementary approaches aimed at strengthening relationships, resolving Aboriginal rights issues and building sustainable First Nations economies. These are:

## 1. Consulting First Nations interim to resolution of the Aboriginal rights question

Government consults and accommodates (where required) First Nations on land and resource decisions that may impact claims of Aboriginal rights interim to their resolution through a treaty or their being proven in and declared by a court. When consulting, government officials are guided by *Updated Procedures for Meeting Legal Obligations When Consulting First Nations*. Government is working to coordinate its consultation obligations across government and harmonize processes with other agencies.

### *Industry's role in consultation*

There is no legal obligation for proponents to consult with or accommodate First Nations – the responsibility lies with the Province. However, government can assign certain procedural aspects of consultation to proponents and, where authority exists to do so, can ask for modifications to plans to avoid potential impacts to Aboriginal interests.

***Procedural aspects of consultation*** – proponents/industry can play an important role in supporting government's consultation efforts because they know the details of their proposed projects/ongoing business and are in a better position to share this information and modify plans to avoid impacting potential Aboriginal interests. Early engagement with First Nations – even prior to the government's consultation process – provides practical, timely and cost effective opportunities to address many potential issues.

Government will consider the circumstances of the proponent/industry when determining whether to assign any of the procedural aspects of consultation. When government assigns any procedural aspects of consultation, it will advise proponents/industry with which First Nations to engage and the appropriate weight for each as well as any agreements that may inform engagement. Proponents will be expected to document engagements and how the project has considered and addressed any potential impacts. Government will assess proponent/First Nation engagement activities and will seek verification from First Nations. Where companies have addressed Aboriginal interests, under certain circumstances government may consider these measures to meet the conditions for accommodation. See Appendix 1 for more information about roles in consultation processes.

***Modifying plans to avoid potential impacts*** – should consultation reveal that a project may need to be modified to address potential Aboriginal interests, proponents may be required to modify plans in order to proceed with the decision-making process.

Note that under the Forest and Range Practices Act and the Environmental Assessment Act, government can require proponents to share information about their proposed projects with First Nations. Please refer to these statutes for further guidance.

*Procedural aspects of consultation for proponents/industry include:*

- *Participating in meetings with government representatives and First Nations*
- *Participating in their own meetings with First Nations*
- *Sharing detailed information about proposed activities*
- *Providing timely and meaningful information to First Nations*
- *Obtaining or discussing information about aboriginal interests*
- *Modifying plans early in the planning process to address aboriginal interests*

## **2. Negotiating treaties for long term reconciliation of provincial and Aboriginal interests**

The Province seeks long term reconciliation of provincial and Aboriginal interests by negotiating and implementing treaties. A modern treaty is a full and formal expression of reconciliation between First Nations and governments that sets out clearly defined rights and responsibilities over land ownership, governance, wildlife and environmental management, financial benefits and taxation. A treaty also sets out processes for resolving disputes and making changes to the treaty.

Treaties are negotiated under the British Columbia Treaty Commission process, a voluntary process of political negotiations between First Nations, Canada and the Province.

## **3. Negotiating agreements interim to resolution of the Aboriginal rights question**

While the B.C. treaty process is achieving success, negotiating and bringing into effect treaties takes time and is not the preferred approach for all First Nations. In the meantime, there are other issues which must be resolved. As a result, government negotiates a range of agreements that contribute to a working relationship with First Nations in the short term. These agreements seek to balance the legal and non-legal interests of First Nations and the Province until full and final reconciliation is achieved.

The Province takes a flexible approach to reflect the interests, circumstances and priorities of the parties. Consequently, interim agreements exist in different forms, names, and scope. Examples of interim agreements include reconciliation frameworks, consultation protocols, economic and/or benefit sharing agreements, treaty related measures, and forestry and range agreements. They may or may not be directly linked to treaty negotiations. Unlike treaties, which set out rights that enjoy constitutional recognition and affirmation, interim arrangements are contractual in nature.

## **4. Improving socio-economic conditions of First Nations and First Nation people**

Through various programs and initiatives, the Province works with Canada and First Nation organizations to address the main priorities identified by First Nations including health, education, housing and infrastructure, and economic development. This work is focused on improving health, social and economic outcomes for Aboriginal peoples.

# Building Relationships With First Nations

## Why? The Benefits for Industry

Increasingly, companies recognize that forming relationships with First Nations makes good business sense and are taking steps to build effective relationships that result in mutual benefits. Benefits for industry include:

### *Certainty for Processes*

A positive relationship can facilitate certainty for business and other processes that result in timely business operations and decisions while averting costly delays. Unmitigated potential impacts to Aboriginal interests can delay decision making and other related processes.

### *Access to a Labour Force*

Resource companies operating in rural areas face potential shortages of skilled labour. First Nations communities are located throughout B.C., including in rural and sometimes isolated parts of the province. Their populations are young and are experiencing rapid growth – about three times the rate of the non-First Nation population. This means First Nations communities can offer a local and available workforce.

### *Access to Services*

The size, terrain, geography of B.C. and distribution of population also present challenges in accessing services. Often, the community located closest to a project is a First Nation community which may be able to provide a range of services that otherwise would be in short supply or costly to access.

### *Marketing and Social Responsibility*

Some sector organizations and social responsibility programs make it a condition that members form partnerships with First Nations. Benefits of membership include improved access to markets, business partners and services.

### *Support for Government Consultation*

A positive relationship between a company and a First Nation can support the Province's consultation obligations. It allows companies to share information about their proposed projects directly with First Nations and in a timely manner. And, based on feedback from the First Nation, companies can readily modify plans in order to avoid impacts to Aboriginal interests. Any accommodations directly related to impacted Aboriginal interests may be considered to be legal accommodation.

### *Access to Local Knowledge*

First Nations hold a wealth of knowledge about the diversity and interactions among plant and animal species, landforms, watercourses and other biophysical features. Companies may benefit from this knowledge in order to build new practices for protecting and conserving resources, including heritage resources.

## **How? Effective Engagement Practices**

While there is no standard formula for a good relationship, the common characteristics are trust, goodwill, respect, commitment and transparency. The following are some of the insights and actions that some companies regard as contributing to effective long term relationships.

### ***Understand the Business Realities***

First Nations have a deep connection to the land that is reflected in their cultural practices and values. This connection is recognized in the constitutional recognition and affirmation of Aboriginal rights. Developing land and resources requires addressing Aboriginal claims and/or proven rights and treaty rights and building effective relationships with First Nations.

### ***Recognize Capacity Challenges***

The capacity of First Nations to engage varies and can be limited. Companies should factor this into their project timelines. As well, First Nation decision makers frequently hold multiple positions in their communities and/or often frequently seek input from the membership before making a decision. Consideration and time should be allowed for decision makers to juggle roles and consult community members.

### ***Engage First, Plan Second***

Successful operations with minimal delays are often the result of companies engaging First Nations prior to finalizing development plans and often before applying to Crown agencies for project permits. Key to engaging is determining which First Nations' Aboriginal interests may be impacted by the proposed project. Advice and assistance on this matter can be obtained from the lead provincial ministry/ministries responsible for approving the applications for the proposed project.

Early engagement provides greater opportunities for developing plans that avoid impacts to Aboriginal interests and are more responsive to the broader interests and values of the First Nation. Early engagement also demonstrates the company's commitment and builds the First Nation's commitment to the project as they see their contributions and input shaping its development and operation.



### ***Build Internal Competencies and Values***

Many companies are unaware of First Nations' histories, cultures, governance, values and interests. Companies that encourage progressive practices and values and build the competencies of staff tend to achieve success. Examples include:

- increasing personal responsibility and ownership of social and legal issues -“doing the right thing”;
- allowing an “investment upfront” approach to financial management practices;
- facilitating cultural awareness, differences and acceptance;
- advancing communication and collaboration skills;
- demonstrating respect for First Nation knowledge and uses of lands and resources;
- understanding the importance of lands and resources to First Nations;
- understanding role of youth in First Nation societies;
- understanding the potential of mutual benefits;
- acting with honour, openness, transparency and respect;
- creating a presence in the community;
- providing support for preserving First Nation cultures;
- understanding the nature of First Nation economies and governance; and
- developing First Nation engagement, employment, environmental, and/or social responsibility policies.

## **Components of Successful Relationships in Practice**

Successful relationships are based on clear objectives and are responsive to a First Nation's interests. The nature of the relationships can be formal or informal and take the shape in the form of an arrangement or a legal agreement - one size does not fit all. The following provides an overview of some components or activities that many companies have found to contribute to successful relationships.

### ***Recognition of First Nation***

Often, First Nations seek recognition from the company that describes the nature of a First Nation's connection to the land or traditional territories. It is recommended that such recognition be tempered with a legal understanding of the manner in which Aboriginal rights and title are recognized in Canadian law, and not just based upon First Nation assertions. Proponents and industry who are unfamiliar with the legal environment can gain some understanding in that regard through discussions with government.

### ***Planning Opportunities***

Some First Nations may wish to be directly involved in all or some stages of planning for the project, including oversight. First Nation involvement in the planning of a project provides greater opportunities to address cultural issues, economic priorities and environmental values.

### ***Environmental Protection***

Many First Nations may express a strong desire for adaptive management regimes or remedial measures. Seeking First Nation input into such measures and involving a First Nation in environmental monitoring could help address this fundamental value.

### ***Participating in the Management of the Company or Project***

Band members could be appointed to the company's board or a senior management positions. Or a First Nations advisory board could be created. These opportunities could facilitate an exchange of knowledge and cultural as well as an oversight role.

### ***Employment Opportunities***

Many partnerships include a commitment to provide employment opportunities to First Nation community members.

### ***Training and Education***

Training and/or education is frequently a priority for First Nation communities because it increases their pool of skills and expertise, and positions them to take advantage of future opportunities. Typical approaches include direct funding for training programs or education, scholarships, mentorships and job-shadowing.

### ***Support for Participation***

Band councils generally do not have the financial resources to fund their participation in project planning, development and review. Their funds are often fully committed to other important community priorities such as housing, health and education. Companies may choose to make financial contributions to provide the necessary support.

### ***Service and Supply Arrangements***

Service and supply arrangements can build the capacity of a First Nation and meet the needs of the company and industry. Some First Nations may already be able to provide services and/or supplies but need additional support to meet the increased demands made by a company. Other First Nations may be looking for a chance to establish themselves as a service centre or supply hub.

### ***Studies***

First Nations may wish to conduct environmental assessments or undertake traditional use studies. These studies could help build a First Nation's capacity and facilitate a mutual understanding of interests, concerns or values.

### ***Protocols***

Agreed upon processes for engaging, sharing information and clarifying roles and responsibilities are most valuable when put in writing.

### ***Equity Ownership***

Equity participation provides First Nations with a direct stake in the project. Companies have used various forms of equity participation including:

- linking participation to project milestones;
- providing an equity loan to the First Nation;
- purchasing equity where an external investor provides money through a separate and transparent arrangement with the First Nation; and,
- loan guarantees.

### ***Profit or Benefit Sharing***

Profit or benefit sharing provides revenues to First Nations for development within their traditional territories.

### ***Dispute Resolution Process***

In all relationships, there will be disagreements. What makes relationships successful is how the parties work through their disputes. Sometimes it may be necessary to have difficult conversations. In many formal agreements between business and First Nations, there is an agreed-to dispute resolution process. Options for these processes include: the appointment of an facilitator or mediator; the establishment of an elders panel; and community consultation.

# Appendix A

## Roles in Government's Consultation Process

Project Phases	Government's Role	Recommended Approach for Proponents/Industry
<b>Early Planning</b>	The responsible provincial ministry/agency (Government) ministry will assist with identifying First Nations and provide advice respecting where to focus engagement efforts.	<ul style="list-style-type: none"> <li>▪ The First Nations Consultative Areas Database Public Tool (CAD Public) generates a list of First Nations with Aboriginal interests in the planning area.</li> <li>▪ Learn about the First Nation – its culture, history, economy, political/governance structures, the people.</li> </ul>
<b>Planning</b>		<ul style="list-style-type: none"> <li>▪ Inform and involve First Nations in planning processes. Learn about their Aboriginal interests and non legal interests in the area and plan accordingly. Advise Government of intentions to engage with First Nations.</li> <li>▪ Establish and communicate clear and reasonable timelines. Timelines should be appropriate and proportionate to the project.</li> </ul>
<b>Submitting Application to Government</b>		<ul style="list-style-type: none"> <li>▪ Keep First Nation advised of milestones, including application submissions.</li> </ul>

Consultation Process	Government's Role	Proponent's Potential Maximum Role
<b>Phase 1: Preparation</b>		
<ol style="list-style-type: none"> <li>1. Identify First Nation</li> <li>2. Identify treaties and process agreements</li> <li>3. Review readily available information</li> <li>4. Consider a level of consultation</li> <li>5. Decide who will engage First Nation(s)</li> </ol>	<ul style="list-style-type: none"> <li>▪ Government will advise proponent:               <ul style="list-style-type: none"> <li>• of its potential role in consultation;</li> <li>• which First Nations have Aboriginal interests;</li> <li>• of any treaty or contractual processes with First Nations;</li> <li>• of any non-confidential information learned from the review; and,</li> <li>• where to focus engagement efforts</li> </ul> </li> <li>▪ Government will advise the First Nation that the proponent will engage with the First Nation in the consultation process.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Verify with Government which First Nations have Aboriginal interests.</li> <li>▪ Provide to Government any information about Aboriginal interests learned from early engagements.</li> <li>▪ Where a First Nation does not wish to engage with a proponent/industry, Government will assume the entire consultation process.</li> </ul>

<b>Phase 2: Engagement</b>		
<ol style="list-style-type: none"> <li>1. Provide information and seek input</li> </ol>		<ul style="list-style-type: none"> <li>▪ Provide to First Nations the following information about the proposed project:               <ul style="list-style-type: none"> <li>• project description;</li> <li>• scope and location of project (maps);</li> <li>• any potential short and long term impacts;</li> <li>• authorizations and timelines;</li> <li>• any anticipated benefits; and</li> </ul> </li> <li>▪ Seek from First Nation the following:               <ul style="list-style-type: none"> <li>• specific Aboriginal interests in the project area;</li> <li>• how the project may impact specific Aboriginal interests; and</li> <li>• where else the Aboriginal interest can be practiced.</li> </ul> </li> <li>▪ In some cases, First Nations may ask for additional studies to help inform consultation and avoid potential impacts. These costs may be reasonable depending on scale of the project and or potential impacts. Find out what studies have already been completed to avoid duplication.</li> </ul>

Consultation Process	Government's Role	Proponent's Potential Maximum Role
<b>Phase 2: Engagement, cont'd.</b>		
2. Engage First Nation(s)	<ul style="list-style-type: none"> <li>Government will maintain oversight of proponent's progress.</li> </ul>	<ul style="list-style-type: none"> <li>Document: engagements; descriptions of specific Aboriginal interests; any potential impacts to those interests; any changes to plans for accommodation purposes; and outcomes and provide to Government.</li> <li>Respond to concerns and information requests.</li> <li>Proponents are encouraged to document all engagements and attempts to engage, the identification of Aboriginal interests and concerns and any modifications implemented or planned.</li> </ul>
3. Complete consultation at appropriate level	<ul style="list-style-type: none"> <li>Government will remain informed of engagements between proponents/industry and First Nations, seeking clarification and confirmation where appropriate.</li> <li>Government will advise if further engagement or information exchanges are required.</li> <li>Government will consider the proponent's engagement record when conducting preliminary assessments.</li> </ul>	<ul style="list-style-type: none"> <li>Proponents are encouraged to address concerns respecting potential impacts to Aboriginal interests. Measures may include: minimizing or altering site footprint; avoidance; mitigation strategies; environmental monitoring; impact benefit and other agreements.</li> <li>Provide engagement record, including: <ul style="list-style-type: none"> <li>Descriptions of specific Aboriginal interests and any potential impacts</li> <li>Descriptions of any modifications implemented for accommodation purposes;</li> <li>A communications log, copies of correspondence meeting notes, other attempts to communicate; and,</li> <li>Summaries of engagement activities and outcomes.</li> </ul> </li> <li>Provide further information to First Nations about project or clarify information about Aboriginal interests as required.</li> </ul>
<b>Phase 3: Accommodation</b>		
1. Review consultation and need to accommodate	<ul style="list-style-type: none"> <li>Government will advise if further information exchanges or accommodations are required</li> </ul>	<ul style="list-style-type: none"> <li>Plans that have been modified for other purposes may not be considered as an accommodation.</li> </ul>
2. Identify accommodation options	<ul style="list-style-type: none"> <li>Government may ask proponent/industry to consider and explore accommodation options.</li> </ul>	<ul style="list-style-type: none"> <li>Measures to address potential impacts do not require the proponent's approval and may be imposed through tenure or licensing conditions.</li> </ul>
3. Propose accommodation and attempt to reach agreement	<ul style="list-style-type: none"> <li>Government is responsible for ensuring appropriate accommodations, if required.</li> </ul>	
<b>Phase 4: Decision and Follow-up</b>		
1. Assess consultation and accommodation record	<ul style="list-style-type: none"> <li>Government will consider each decision on the merits of: <ul style="list-style-type: none"> <li>consultation; and</li> <li>the application itself.</li> </ul> </li> </ul>	
2. Provide decision to First Nation	<ul style="list-style-type: none"> <li>Government will provide decision to First Nation.</li> </ul>	
3. Ensure implementation of accommodations	<ul style="list-style-type: none"> <li>Government will monitor for compliance and enforcement of any accommodations.</li> </ul>	<ul style="list-style-type: none"> <li>Where required, proponents/industry will implement any accommodations. Failure to do so may result in failure to be compliant with tenure or licensing conditions.</li> </ul>



## Useful Terms and Definitions

<b>Aboriginal interests</b>	A term used in this document to refer to claimed but as yet unproven Aboriginal rights, including title that require consultation and, if appropriate, accommodation. This term may also be used in a general sense to refer to claimed and proven rights in some contexts.
<b>Aboriginal rights</b>	Practices, customs or traditions integral to the distinctive culture of the First Nation claiming the right prior to European settlement. Examples may include hunting, fishing and gathering.
<b>Aboriginal title</b>	A subcategory of Aboriginal rights that is a unique interest in land that includes a right to exclusive use and occupation. A claimant must prove its exclusive occupation of land as of the date that the Crown asserted sovereignty (1846).
<b>Aboriginal people</b>	All indigenous people of Canada, including Indians (status and non-status), Métis, and Inuit people.
<b>Accommodation</b>	Accommodation refers to mitigating the impact of decisions. Accommodation is determined through the consultation process and must balance the Aboriginal interest with other interests.
<b>Band</b>	<p>An organizational structure defined in the Indian Act which represents a particular body of Indians as defined in the Indian Act. Bands are quasi legal entities that are instruments of the Indian Act. There are more than 200 bands with reserves in British Columbia.</p> <p>First Nations with a modern treaty are no longer organized into bands and administered by a band council. They are nations with their own self governance systems and no longer administered under the Indian Act. Be respectful of the correct governance system.</p>
<b>Band Council Resolution</b>	<p>A resolution is the official expression of a Band Council decision.</p> <p>Chiefs and Councils are elected by band members to govern the band and pass laws on Indian reserve lands.</p>
<b>British Columbia Treaty Commission (BCTC)</b>	An independent body of five commissioners appointed by Canada, the Province and the First Nations Summit. It oversees the process for negotiating treaties in British Columbia. Not all First Nations are negotiating treaties with the Province and Canada. Approximately 60 percent of eligible First Nations are participating in the BCTC process.
<b>Chief and Council</b>	Chiefs and Councils are elected by band members to govern the band and pass laws on Indian reserve lands. They are elected according to provisions of the Indian Act, charged with the responsibility for “the good government of the band” and delegated the authority to pass by-laws on Indian reserve lands.
<b>Crown</b>	Refers to the provincial or federal government generally, and in this document refers to the provincial government including departments, ministries and Crown agencies and includes all government employees that are doing the work of the B.C. government.
<b>First Nation</b>	A term that came into common usage in the 1970’s to replace the word “Indian” (an Indian Act term) which some people found offensive. Although the term “First Nation” is widely used, no legal definition of it exists. Among its uses, the term “First Nations peoples” refers to the Indian peoples of Canada, status and non-status. Some Indian bands have also adopted the term “First Nation” to replace the word “band” in the name of their community.
<b>Indian</b>	<p>One of three peoples recognized as Aboriginal in the 1982 Constitution along with Inuit and Métis. There are three categories of Indians: status Indian, non-status Indians and Treaty Indians.</p> <p>Status Indian: a person defined as an Indian under the Indian Act.</p> <p>Non-status Indian: a person who claims First Nation ancestry but does not meet the criteria for registration, or has chosen not to be registered under the Indian Act.</p> <p>The term may also collectively describe all indigenous peoples in Canada; however, it is a term that is becoming less common.</p>
<b>Indian Act</b>	Most First Nations in Canada are governed by the Indian Act, a federal statute that determines Aboriginal status and regulates taxation, band membership and land management.

<b>Indigenous people</b>	<p>The international community has not adopted a definition of the term but generally it can refer to peoples descended from the population that inhabited an area at the time of conquest or colonization or the establishment of present State boundaries irrespective of their legal status.</p> <p>(Guidelines on Indigenous Peoples' Issues, United Nations Development Group: . <a href="http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf">http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf</a>)</p> <p>First Nation or Aboriginal peoples are indigenous to North America. This term is used by the United Nations and is gaining acceptance among First Nations and scholars.</p>
<b>Métis</b>	<p>For purposes of Section 35 rights, the term Métis refers to distinctive peoples who, in addition to their mixed Indian/Inuit and European ancestry, developed their own customs, and recognizable group identity separate from their Indian or Inuit and European forebears.</p> <p>A Métis community for the purposes of section 35 rights is a group of Métis with distinctive collective identity, living together in the same geographic area and sharing a common way of life.</p> <p>The Government of British Columbia does not consult with the Métis because it is of the view that no Métis community is capable of successfully asserting site specific Section 35 rights in British Columbia.</p> <p>The Province will continue to work with the Métis Nation British Columbia (MNBC) and Métis communities to reach the goals of the Métis Nation Relationship Accord.</p>
<b>Reserve</b>	<p>Indian Reserves are specified in the Indian Act as federal Crown lands set aside for the use and benefit of bands.</p> <p>First Nations with modern treaties no longer have reserves set aside for them. They have treaty settlement lands and have jurisdiction over them.</p>
<b>s. 35</b>	<p>Section of the 1982 Constitution that states that Aboriginal rights and treaty rights are recognized and affirmed. As a result of this constitutional recognition, government has an obligation not to infringe Aboriginal and treaty rights without justification, and to consult about claimed rights or title before they have been proven through the courts or negotiated in treaties.</p>
<b>s. 91(24)</b>	<p>Section of the 1867 Constitution which confers upon the federal parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians".</p>
<b>Traditional territory or territory</b>	<p>The geographic area identified by First Nations as the area of land which they and their ancestors occupied or used. These areas will often overlap with the traditional territories of other First Nations. In Canadian law, this is not necessarily reflective of Aboriginal title.</p>
<b>Treaty</b>	<p>A solemn agreement between government and a First Nation that defines the rights of Aboriginal peoples with respect to lands and resources over a specified area, and may also define the self-government authority of a First Nation. Treaties may be historic agreements dating from the mid or late 1800's in B.C. or modern "final agreements" which have been ratified by Canada, B.C. and the First Nation(s).</p>
<b>Treaty – historic</b>	<p>Generally refer to land surrendered by First Nations in exchange for rights that may include hunting, fishing and trapping. These include Treaty No. 8 in north eastern B.C. and the 14 Douglas Treaties on Vancouver Island. They all occurred prior to 1925.</p>
<b>Treaty – modern</b>	<p>Negotiated agreements that set out rights and obligations for all parties, including land ownership and any consultation obligations. The first modern treaty in B.C. with the Nisga'a Nation, came into effect in 2000. Since then, treaties with Tsawwassen and Maa-nulth First Nations have concluded. Several other negotiations are currently in the final stages of completion.</p>
<b>Tribal Council</b>	<p>A self-identified entity which represents a group of bands or Aboriginal people sharing a common interest. The tribal council may provide a range of advice and/or services to its members. Tribal councils do not necessarily coincide with treaty groups.</p>
<b>Treaty settlement land</b>	<p>Pursuant to the terms of a modern treaty, these are lands that a First Nation collectively owns in fee simple and over which it has jurisdiction. Federal and provincial laws apply concurrently with First Nation laws.</p>

## Resources

<b><i>Updated Procedures for Meeting Legal Obligations When Consulting First Nations</i></b>	Government's procedure for meeting its legal obligations to consult First Nations on proposed land resource decisions. <a href="http://www.gov.bc.ca/arr/reports/down/updated_procedures.pdf">http://www.gov.bc.ca/arr/reports/down/updated_procedures.pdf</a>
<b><i>Operational Guidance on the Role of Proponents in First Nations Consultation</i></b>	Government's advice to staff on when to consider assigning the procedural aspects of consulting to proponents. <a href="http://www.gov.bc.ca/arr/consultation/down/guide_to_involving_proponents_2011.pdf">http://www.gov.bc.ca/arr/consultation/down/guide_to_involving_proponents_2011.pdf</a>
<b><i>Consultative Area Database (CAD)</i></b>	The CAD Public Map Service is an online interactive map that allows the general public, industry, other governments and First Nations to identify First Nations who have interests in a specific area. This tool is not definitive and should be in conjunction with government advice. <a href="ftp://ftp.geobc.gov.bc.ca/pub/outgoing/CAD/CAD_Public_Map_Service-User_Guidance-Technical_Instructions.pdf">ftp://ftp.geobc.gov.bc.ca/pub/outgoing/CAD/CAD_Public_Map_Service-User_Guidance-Technical_Instructions.pdf</a>
<b><i>Ministry of Aboriginal Relations and Reconciliation</i></b>	The Ministry of Aboriginal Relations and Reconciliation initiates and promotes innovative approaches to Aboriginal policy and is the Province's representative for all treaty negotiations. Explore its website for useful information and links. <a href="http://www.gov.bc.ca/arr/index.html">http://www.gov.bc.ca/arr/index.html</a>
<b><i>Judgments of the Supreme Court of Canada</i></b>	<a href="http://www.scc-csc.gc.ca/decisions/index-eng.asp">http://www.scc-csc.gc.ca/decisions/index-eng.asp</a>
<b><i>First Peoples Language Map of B.C.</i></b>	<a href="http://maps.fphlcc.ca/">http://maps.fphlcc.ca/</a>
<b><i>Aboriginal Engagement in the Mining and Energy Sectors Report</i></b>	<a href="http://www.nrcan.gc.ca/minerals-metals/aboriginal/engagement/4067">http://www.nrcan.gc.ca/minerals-metals/aboriginal/engagement/4067</a>
<b><i>Atlas of Canada – Aboriginal Peoples</i></b>	<a href="http://atlas.nrcan.gc.ca/site/english/featureditems/aboriginalpeoples">http://atlas.nrcan.gc.ca/site/english/featureditems/aboriginalpeoples</a>
<b><i>First Nation Profiles (Aboriginal Affairs and Northern Development Canada)</i></b>	<a href="http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/index.aspx?lang=eng">http://pse5-esd5.ainc-inac.gc.ca/fnp/Main/index.aspx?lang=eng</a>

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